IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

FAO (MVA) No.601 of 2003.
Reserved on:24.04.2007.
Decided on:May 08, 2007

National Insurance Company Ltd. .....Appellant.

VERSUS

Smt.Neelam Raina & Ors. .....Respondents.

Coram

The Hon'ble Mr.Justice Kuldip Singh, Judge.

Whether approved for reporting?[1] No

For the Appellant: **Mr.Deepak Bhasin, Advocate.**

For Respondent No.1: **Mr.K.D.Batish, Advocate.**

For Respondents No.2 & 3: **Mr.Sanjay Jaswal, Advocate.**

Kuldip Singh, Judge

Insurance Company respondent No.3 has come in appeal against the award dated 1.9.2003 passed by Motor Accident Claims Tribunal (1) Kangra Division at Dharamshala in MACP No.40-N/II-2000 awarding a sum of Rs.2,51,168 as compensation to petitioner against respondent No.3 along with interest at the rate of 9% per annum from the date of petition till realization. The parties are referred herein in the same manner as in the impugned award.

2. The brief facts are that on 29.10.1999 petitioner boarded Jeep No.HP-38-6060 along with other persons for going to Mata Hori Devi. The Jeep was being driven rashly and negligently by

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[1] ***Whether the reporters of the local papers may be allowed to see the Judgment ?Yes***

respondent No.2 who lost the control and consequently struck against another vehicle resulting in accident and injuring petitioner and others. The left arm of the petitioner was amputated and she has become perpetual handicapped. She cannot render help to the family members and it has also affected her earning capacity by way of tuition etc. which she was taking. The petitioner at the time of accident was 36 years old. She was contributing Rs.2500 per month by doing household work. Respondent No.2 is the driver of the Jeep.

3. The respondents No.1 and 2 filed a joint reply and have denied that accident has taken place due to rash and negligent driving by respondent No.2. They have taken the defence that another vehicle came from opposite side which was being driven in high speed and rashly, which caused injury to the arm of the petitioner. Respondent No.2 was driving the Jeep with due care and caution. The accident had taken place due to negligence of the driver of the other vehicle. It has been submitted that driver and owner of the other vehicle are necessary parties. It has been submitted that petitioner was carrying her goods in the vehicle at the time of accident.

4. The learned Tribunal allowed the petition as noticed above. In Issue No.1 the Tribunal has held that petitioner has sustained injuries in the accident due to rash and negligent driving of the driver of Jeep No.HP-38-6060. In Issue No.2 it has been held that petitioner is entitled to Rs.2,51,168 compensation and Insurance Company would be liable to reimburse the owner of the vehicle qua

the amount of compensation. Maintainability of the petition under Issue No.3 has been decided against respondents No.1 and 2. In Issue No.4 it has been held that respondent No.3 has not led any evidence, however, photocopy of driving licence Ext.RW-1/A has been placed on record and it cannot be said that respondent No.2 was not having valid and effective driving licence at the time of accident. The issue No.5 has been decided by returning the finding that the vehicle was insured with respondent No.3 vide Insurance Policy Ext.RX and Cover Note Ext.RW-1/C.

5. The respondent no.3 has submitted that respondent No.2 driver was not holding valid and effective driving licence to drive the vehicle at the time of accident which was breach of the condition of the policy. The Jeep was carrying unauthorized passengers in violation of the permit and breach of conditions of the policy. The insurance of the vehicle with respondent No.3 was also denied. The negligence of the driver respondent No.2 has also been denied.

6. I have heard the learned counsel for the parties and have also gone through the record.

7. The learned counsel for respondent No.3 has submitted that as per Ext.RW-1/B Registration Certificate the Jeep was registered as goods vehicle. He has submitted that learned Tribunal has not decided the issues No.2, 4 and 5 properly. The Insurance Company has been wrongly made liable to pay the compensation. The petitioner was gratuitous passenger in the goods vehicle and,

therefore, respondent No.3 is not liable to pay any compensation as per policy. He has submitted that it is not the case of the petitioner that she was sitting in the Jeep as owner of the goods. The application under Order 6 Rule 17 C.P.C. of respondent No.3 was wrongly dismissed. By way of amendment, the respondent no.3 wanted to take the plea that vehicle was being used for carrying unauthorized passengers. The issue of violation of policy was not properly decided. The driver was not holding valid and effective driving licence at the time of accident. He was holding a licence to drive LMV only whereas the vehicle in question was a transport vehicle for which specific endorsement is required under Section 3 of the Motor Vehicles Act, 1988. The award is on the higher side. Learned counsel for the petitioner has supported the award. Similarly learned counsel for owner and driver of the Jeep has also supported the award.

8. The learned counsel for the Insurance Company respondent No.3 has heavily relied that in the claim petition the petitioner has not pleaded that she was sitting in the Jeep as owner of the goods and the Jeep was registered as goods vehicle vide Registration Certificate Ext.RW-1/B. In F.I.R. Ext.PW-3/A again there is no mention that petitioner was sitting in the Jeep as owner of the goods. The F.I.R. was lodged by none else but driver respondent No.2 Rajesh Kumar. The perusal of F.I.R. Ext.PW-3/A show that it has been recorded therein that on 29.10.1999 he (Rajesh Kumar) along

with Smt.Neelam Raina and Kirpa Ram and goods were going from Nurpur to Mata Hori Devi. Thus, reference of goods in the Jeep is very much there. Now it is to be seen that whether goods were of petitioner or not. The respondents No.1 and 2 have specifically pleaded in their reply that petitioner was carrying her goods in the vehicle. The non pleading of carrying of goods by petitioner herself in the claim petition is immaterial inasmuch as owner and driver of the vehicle were much concerned regarding the payment of compensation in terms of the Act and the Policy and they have taken a specific plea in their reply that petitioner was carrying the goods in the Jeep and their this stand is supported by F.I.R. Ext.PW-3/A. The respondent No.3 was put to notice regarding the fact that petitioner was travelling in the vehicle in question as owner of the goods. Therefore, even if petitioner has not specifically pleaded in her claim petition, the respondent No.3 was aware of the case to be met by it. RW-1 Rajesh Kumar driver has stated that on 29.10.1999 Neelam Raina was travelling in Jeep HP-38-6060 and was carrying her goods in the Jeep. In cross examination on behalf of the respondent No.3 nothing has been put to him that Neelam Raina was not carrying her goods in the Jeep at the time of accident. The fact that RW-1 has not been cross examined on this vital fact shows that respondent No.3 has admitted statement of RW-1 that at the time of accident petitioner was travelling in the Jeep along with her goods. Thus, it has been established on record that petitioner was sitting in the vehicle as owner of the goods.

The Jeep was duly insured with respondent No.3 vide Policy Ext.RX and Cover Note Ext.RW-1/C. The respondent No.3 has failed to make out any case that Insurance Company is not liable to pay compensation to petitioner under the Policy.

9. The counsel for respondent No.3 has submitted that the Tribunal has erred in dismissing the application of respondent No.3 under Order 6 Rule 17 C.P.C. vide order dated 12.6.2003. In the application under Order 6 Rule 17 C.P.C. respondent No.3 wanted to take preliminary objection No.4 to the following effect:-

> "That the vehicle was being used for carrying unauthorized passenger i.e. for a purpose not allowed by the permit under which the vehicle is used, which is a breach of conditions of the policy and as such the insurance company is not liable to pay any compensation."

The Tribunal vide order dated 12.6.2003 has dismissed the amendment application of respondent No.3 on the ground that proposed amendment is not necessary to determine the real point in controversy. In any case, the Tribunal in the impugned award has considered the plea of respondent No.3 that the petitioner was unauthorized passenger in the vehicle at the time of accident. The dismissal of amendment application has not caused any prejudice to respondent No.3 when plea of respondent No.3 that petitioner was an

unauthorized passenger has been considered in the impugned award by the Tribunal.

10. It is also the case of respondent No.3 that driver of the Jeep was not having valid and effective driving licence at the time of accident. This issue was to be proved by respondent No.3 but no evidence has been led by respondent No.3 on Issue No.4. A copy of driving licence Ext.RW-1/A has been placed on record. The violation of the policy and defect in the driving licence is to be proved by Insurance Company which in the present case respondent No.3 has totally failed.

11. The Tribunal has rightly appreciated the facts and has rightly come to the conclusion that respondent No.3 is liable to pay compensation to the petitioner and the respondent No.3 has failed to make out any case for interference.

12. No other point was urged.

13. In view of the above discussion, the appeal is dismissed and the impugned award dated 1.9.2003 passed by the Motor Accident Claims Tribunal (1), Kangra Division at Dharamshala is upheld with no order as to costs.

(Kuldip Singh)
Judge.

May 08, 2007
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